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IN THE

Supreme Court of the United States

October Term, 1968.

No. 1355.

BLUMCRAFT OF PITTSBURGH, a Partnership Consisting of Hyman Blum, Max Blum, Louis Blum and Harry P. Blum,
Petitioner,

v.

CITIZENS AND SOUTHERN NATIONAL BANK OF SOUTH CAROLINA, DANIEL CONSTRUCTION COMPANY, INC. and COLONIAL IRON WORKS, INC.,
Respondents.

MOTION FOR LEAVE TO FILE SECOND PETITION FOR REHEARING AND SECOND PETITION FOR REHEARING.

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MOTION FOR LEAVE TO FILE SECOND PETITION FOR REHEARING.

Petitioner, Blumcraft of Pittsburgh, hereby moves the Court for leave to file a second petition for rehearing of the order of the Court of June 16, 1969 denying the petition for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in the above captioned case as prayed for in the petition filed by Blumcraft of Pittsburgh on May 3, 1969.

SECOND PETITION FOR REHEARING.

Petitioner, Blumcraft of Pittsburgh, hereby prays that this Court grant rehearing of its order of June 16, 1969 denying the petition for Writ of Certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in the above captioned case as prayed for in the petition filed by Blumcraft of Pittsburgh on May 3, 1969.

BRIEF IN SUPPORT OF THE MOTION AND SECOND PETITION FOR REHEARING.

Since the Ruling by the Court Denying Petitioner's Petition for Rehearing the Real Defendant, Architectural Art Mfg., Inc. Has Broadcast Through the Trade a News Release So Phrased as to Mislead One to Believe That the Court Had Ruled Against Petitioner on the Merits of the Present Patent Infringement Suit.

On October 13, 1969 the Court denied the Petition for Rehearing of the Court's denial of the Petition for Certiorari seeking review of the decision of the Court of Appeals for the Fourth Circuit reversing the judgment of the District Court for the District of South Carolina and holding United States Patents Nos. D-171,963 and 2,905,445 therefore invalid.

On or about October 15, 1969 Architectural Art. Mfg., Inc., the real party defendant in the present case, through its president Wenzel W. Thom, procured the issuance of the news release attached hereto as Exhibit A. The news release, issued by the National Association of Architectural Metal Manufacturers to its members, effectively reached the entire trade interested in the merits of the present patent infringement suit.

In its press release no reference is made to the specific ruling of the Court which was the denial of the Petition for Rehearing or of the prior ruling of the Court which was the denial of the Petition for Certiorari. The news release only states that the Court "has ruled in favor" of the defendants "in a patent infringement suit brought by Blumcraft of Pittsburgh". The clear implication and natural inference to be drawn by any person reading the news release is that the Court has ruled on the subject matter of the patent infringement suit and held the patents invalid. This is contrary to fact and law. *Brown v. Allen,* 344 U. S. 443,

492 (1953); *House v. Mayo,* 324 U. S. 42, 48 (1945); *United States v. Carver,* 260 U. S. 482, 490 (1923).

As set forth in the Petition for Rehearing the design patent in suit has become the subject matter of two additional infringement suits in the Fifth Circuit. There is the prospect of further litigation in the Seventh, Eighth and Ninth Circuits.

The effect of the news release broadcast by Architectural Art will be to persuade others that the patents in suit have been finally held invalid by the Court. In fact, the design patent in suit has been held valid by the Court of Claims and invalid by the Court of Appeals for the Fourth Circuit.

It is proper for the Court to grant leave to file a second petition for rehearing where entirely new grounds not previously available to the petitioner are presented. *Schriber Co. v. Cleveland Trust Co.,* 305 U. S. 47 (1938), Certiorari denied 303 U. S. 639, Petition for Rehearing denied 303 U. S. 667, Second Petition for Rehearing granted 304 U. S. 587.

For the reasons set forth above and in the Petition for a Writ of Certiorari and the Petition for Rehearing, it is respectfully urged that the Motion for Leave to File a Second Petition for Rehearing be granted, that the rehearing be granted and that, upon such rehearing, a Writ of Certiorari issue to the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,

JAMES C. MCCONNON,
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PAUL & PAUL,

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Attorneys for Petitioner.

EXHIBIT A.

NEWS RELEASE

FROM NATIONAL ASSOCIATION OF ARCHITECTURAL METAL MANUFACTURERS

IMPORTANT

The United States Supreme Court has ruled in favor of Citizens and Southern National Bank and the Colonial Iron Works of South Carolina and Daniel Construction Co. in a patent infringement suit brought by Blumcraft of Pittsburgh in 1962. For more information please write to Wenzel W. Thom, President, Architectural Art Mfg., Inc., P. O. Box 8106, Munger Station, Wichita, Kansas 67208.

CERTIFICATE OF COUNSEL.

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 58(2) of the Rules of this Court.

JAMES C. MCCONNON,
Counsel for Petitioner.